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14
15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

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18 U.S. EQUAL EMPLOYMENT
19 OPPORTUNITY COMMISSION,

20 Plaintiff,

21 vs.

22
23 SHARP HEALTHCARE AND DOES
24 1-10, INCLUSIVE,

25 Defendant(s).

'15CV1936 H KSC

**COMPLAINT-CIVIL RIGHTS;
EMPLOYMENT
DISCRIMINATION**

(42 U.S.C. §§ 2000e, et seq.
and 12117)

JURY TRIAL DEMAND

26
27 **NATURE OF THE ACTION**

28 This is an action under Title I of American with Disabilities Act of 1990

1 (“ADA”), as amended by the ADA Amendment Act (“ADAAA”) of 2008, and
2 Title I of the Civil Rights Act of 1991, to correct unlawful employment practices
3 on the basis of disability and to provide appropriate relief to Charging Party
4 Sandra Juarez (“Juarez”), who was adversely affected by such practices. As
5 alleged with greater particularity in Paragraphs 16-35 below, Plaintiff U.S. Equal
6 Employment Opportunity Commission alleges that Defendant Sharp Healthcare
7 discriminated against Juarez on the basis of a perceived disability in violation of
8 Section 102 of the ADA, 42 U.S.C. §§ 12112. More specifically, following a
9 post-offer medical examination, Defendant Sharp Healthcare regarded Juarez as
10 disabled and rescinded her job offer.

11 **JURISDICTION AND VENUE**

12 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451,
13 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to
14 § 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference §§
15 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42
16 U.S.C. §§ 2000e-5(f)(1) and (3), and pursuant to § 102 of the Civil Rights Act of
17 1991, 42 U.S.C. § 1981a.

18 2. The employment practices alleged to be unlawful were committed
19 within the jurisdiction of the United States District Court for the Southern District
20 of California.

21 **PARTIES**

22 3. Plaintiff U.S. Equal Employment Opportunity Commission
23 (Plaintiff” or the “Commission”) is an agency of the United States of America
24 charged with the administration, interpretation and enforcement of Title I of the
25 ADA, and is expressly authorized to bring this action under § 107(a) of the ADA,
26 42 U.S.C. § 12117(a).

27 4. At all relevant times, Defendant Sharp Healthcare (“Defendant” or
28 “Sharp”) has continuously been a California corporation doing business in San

1 Diego County, State of California.

2 5. At all relevant times, Defendant has continuously employed at least
3 15 employees.

4 6. At all relevant times, Defendant has continuously been an employer
5 engaged in an industry affecting commerce within the meaning of § 101(5) of the
6 ADA, 42 U.S.C. § 12111(5), and § 101(7) of the ADA, 42 U.S.C. § 12111(7).

7 7. At all relevant times, Defendant has been a covered entity under
8 § 101(2) of the ADA, 42 U.S.C. § 12111(2).

9 8. All of the acts and failures to act alleged herein were duly performed
10 by and attributable to all Defendant(s), each acting as a successor, agent,
11 employee, alter ego, indirect employer, joint employer or under the direction and
12 control of the others, except as specifically alleged otherwise. Said acts and
13 failures to act were within the scope of such agency and/or employment, and each
14 Defendant(s) participated in, approved and/or ratified the unlawful acts and
15 omissions by the other Defendant(s) complained of herein. Whenever and
16 wherever reference is made in this Complaint to any act by a Defendant or
17 Defendants, such allegations and reference shall also be deemed to mean the acts
18 and failures to act of each defendant acting individually, jointly, and/or severally.

19 9. Plaintiff is ignorant of the true names and capacities of each
20 Defendant sued as DOES 1 through 10, inclusively, and therefore the Commission
21 sues said defendants by fictitious names. The Commission reserves the right to
22 amend the complaint to name each DOE defendant individually or corporately as
23 it becomes known. The Commission alleges that each DOE defendant was in
24 some manner responsible for the acts and omissions alleged herein and the
25 Commission will amend the complaint to allege such responsibility when the
26 same shall have been ascertained by the Commission.

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STATEMENT OF CLAIMS

10. More than thirty (30) days prior to the institution of this lawsuit, Juarez filed a charge of discrimination with the Commission alleging violations of the ADA by Sharp.

11. On January 29, 2015, the Commission issued Defendant an Amended Letter of Determination finding reasonable cause to believe that the ADA was violated and inviting Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the discriminatory practices and provide appropriate relief.

12. The Commission engaged in communications with Defendant to provide Defendant with the opportunity to remedy the discriminatory practices described in the Amended Letter of Determination.

13. The Commission was unable to secure from Defendant a conciliation agreement acceptable to the Commission.

14. On June 12, 2015, the Commission issued Defendant a Notice of Failure of Conciliation.

15. All conditions precedent to the initiation of this lawsuit have been fulfilled.

16. Since at least 2012, Defendant has engaged in unlawful employment practices in violation of Section 102(a) and (b) of the ADA, 42 U.S.C. 12112 (a) and (b). More specifically, on or about June 27, 2012, Defendant denied Juarez employment on the basis of a perceived disability.

17. In early 2012, Juarez applied for a Certified Surgical Scrub Technologist position with Defendant.

18. At the time of her job application, Juarez was qualified for the Surgical Scrub Technologist position because she possessed over 20 years of relevant work experience and had never experienced any problems with the physical demands of that position.

1 19. On or about March 27, 2012, Juarez was interviewed via telephone
2 by Sharp's OPP Department Lead. During this job interview, Defendant asked
3 Juarez whether she could perform a series of physical requirements required for
4 the job. Juarez responded that she could perform all these tasks.

5 20. On or about April 12, 2012, Defendant forwarded Juarez a written
6 conditional job offer for the Surgical Scrub Technologist position with a projected
7 start date of May 17, 2012. The letter further described the job offer as
8 "contingent upon successful completion of the post-offer physical exam" and a
9 "urine drug screening."

10 21. On April 18, 2012, Defendant subjected Juarez to a post-offer medical
11 inquiry by requiring her to fill out a "Post-Offer Health History Questionnaire." In
12 this questionnaire, Juarez disclosed to Defendant that she underwent ankle surgery
13 in 1980 and that she was currently being prescribed anti-inflammatory medication
14 for her minor ankle ailment.

15 22. On or about May 14, 2012, Defendant subjected Juarez to a post-
16 offer medical examination by a nurse practitioner with Defendant's Employee
17 Occupational Health Department ("EOHD").

18 23. During the May 14, 2012 medical examination, Defendant's nurse
19 practitioner required Juarez to perform a series of mobility exercises, such as
20 squatting to the ground and then raising herself up. Juarez disclosed that due to a
21 prior ankle surgery in 1980, she needed to push off the ground or grab a stationary
22 object for balance to push herself up from the squatting position. Juarez also
23 explained that during her prior 20 year work history as a surgical scrub
24 technologist, her minor ankle ailment had never precluded her from performing
25 any job duties or tasks, and that it would not prevent her from performing any
26 future work-related physical demands with Defendant.

27 24. A May 14, 2012 "Employee Charting Note" completed by
28 Defendant's nurse practitioner states that Juarez has a "[h]ealed scar dorsal ankle,

1 unable to heel walk on right ankle. To squat kneels on left knee holding onto
2 object for stability.”

3 25. On or about May 17, 2012, Defendant’s nurse practitioner completed
4 a New Hire Post Offer Physical Report in which she wrote, “[a]pplicant is
5 medically qualified to work with the following special limitations: Unable to
6 squat, may kneel on one knee holding to object for stability.”

7 26. Following receipt of the May 17, 2012 New Hire Post Offer Physical
8 Report from the nurse practitioner, Defendant unilaterally initiated the
9 Accommodation Review Process and scheduled an interactive meeting with
10 Juarez for May 24, 2012.

11 27. Scheduling an interactive meeting was unnecessary because Juarez
12 never communicated to Defendant that she, (a) has a disability, (b) has any
13 medical limitations and/or restrictions, and (c) needed a reasonable
14 accommodation.

15 28. On May 24, 2012, Juarez met with Defendant’s representatives for an
16 interactive process meeting. During the meeting, Defendants’ representatives
17 described “squatting” as an “essential” job function of the surgical scrub
18 technologist position and wanted to clarify whether she would need someone to
19 assist her with squatting. Juarez demonstrated her range of motion in her ankle
20 and explained that she did not need any assistance or an accommodation with
21 squatting. Juarez repeatedly told Defendant’s representatives that she only needed
22 to use the floor or a stable object for balance as she rose from the squatting
23 position.

24 29. Despite Defendant’s representation that “squatting” is an essential job
25 function, Sharp’s own written job description for the Certified Surgical Scrub
26 Technologist position does not reflect “squatting” as an “essential” job function.

27 30. On or about June 27, 2012, Defendant forwarded a letter to Juarez
28 rescinding the formal job offer. Defendant explained in its letter that “[a]fter

1 significant review, it was concluded that we are not able to accommodate your
2 restrictions.”

3 31. Defendant failed to obtain and consider medical evidence from a state
4 licensed doctor of medicine (“Health Care Provider”) to accurately ascertain
5 Juarez’s actual condition in violation of its own accommodation review policies.

6 32. Defendant relied solely on its own subjective opinions in concluding
7 that Juarez was a disabled individual who could not be reasonably accommodated.

8 33. Juarez has over 20 years of prior work experience as a surgical scrub
9 technologist. Squatting was never an essential job function during Juarez’s prior
10 20 year work history as a surgical scrub technologist.

11 34. During the pre-employment process with Defendant, Juarez was a
12 qualified individual capable of performing the essential functions of the Surgical
13 Scrub Technologist position without any accommodation.

14 35. A few months after Defendant rescinded Juarez’s job offer, Juarez
15 was subsequently employed in similar surgical scrub technologist position at
16 another medical facility.

17 36. The effect of the practices complained of as described in paragraphs
18 16 through 35 have been to deprive Juarez of equal employment opportunities
19 and otherwise adversely affect her status as an employee because of a perceived
20 disability.

21 37. The unlawful employment practices in paragraphs 16 through 35
22 above were intentional and caused to suffer emotional distress.

23 38. The unlawful employment practices complained of above were done
24 with malice or with reckless indifference to Juarez’s federally protected rights.

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PRAYER FOR RELIEF

The Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, and all persons in active concert or participation with each of them, from engaging in any employment practices which discriminate on the basis of disability and/or perceived disability.

B. Order Defendant(s) to institute and carry out policies, practices, and programs to ensure that they would not engage in unlawful employment practices in violation of § 102(a) and (b), 42 U.S.C. § 12112(a) and (b).

C. Order Defendant(s) to make whole Juarez by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial.

D. Order Defendant(s) to make Juarez whole by providing compensation for past and future pecuniary losses, including but not out-of-pocket expenses suffered by her which resulted from the unlawful employment practices described above in the amounts to be determined at trial.

E. Order Defendant(s) to make Juarez whole by providing compensation for non-pecuniary losses resulting from the unlawful employment practices described above in amounts to be determined at trial. The non-pecuniary losses include emotional pain, suffering, inconvenience, mental anguish, humiliation and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendant(s) to pay Juarez punitive damages for its malicious and/or reckless conduct as described in Paragraphs 16-35 above in an amount to be determined at trial.

G. Award the Commission its costs of this action.

H. Grant such further relief as the Court deems necessary and proper in the public interest.

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JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

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Dated: August 27, 2015


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